

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems)	MB Docket No. 04-207
)	

COMMENTS OF STARZ ENCORE GROUP LLC

Starz Encore Group LLC (“Starz Encore”) submits these comments in response to the Commission’s Public Notice, DA 04-1454, released May 25, 2004, seeking information regarding the provision of a la carte and “themed-tier” services on cable television and direct broadcast satellite systems. Because Starz Encore’s premium programming principally is distributed a la carte, Starz Encore believes that it has substantial information and experience relevant to the Commission’s current inquiry. Networks now carried on basic or expanded basic tiers would face significant additional marketing and other costs if they are carried on an a la carte or “themed tier” basis by cable operators and direct satellite broadcast providers (collectively, multichannel video programming distributors, or “MVPDs”).

A. Background

Starz Encore provides premium movie networks for distribution by cable, direct-to-home satellite, and other distribution media in the United States. Starz Encore operates 14 full-time domestic movie channels consisting of: (1) STARZ!, which airs primarily first-run movies; (2) STARZ! multiplex channels, which air movies first carried on STARZ!, according to categories of movies; (3) Encore, which airs first-run movies and classic contemporary movies; (4) the Encore thematic multiplex channels, each of which exhibits movies based upon individual themes; and (5) MOVIEplex, a “theme by day” channel featuring a different Encore or thematic

multiplex channel each day, on a weekly rotation. Starz Encore also provides high definition feeds of some of its channels and recently launched the Starz On Demand service which allows subscribers to choose movies from a group of popular titles each month and offers full VCR/DVD-type control and playback features. On June 14, 2004, Starz Encore also introduced STARZ! Ticket on Real Movies, an Internet-based subscription movie service. As a premium service provider, Starz Encore is well positioned to comment on the differences between marketing advertiser-supported cable programming services and marketing a la carte services.

B. The Increased Cost of Marketing A La Carte Services

Already much has been made of the reduced distribution and diminished advertising revenues that programmers are likely to face if their services are shifted from highly penetrated tiers to mini-tiers or a la carte carriage.¹ However, our experience indicates that in addition to those problems, programmers facing a shift to a la carte carriage would be confronted with vastly different marketing and customer support challenges than they are accustomed to with tiered carriage. In an all a la carte world, programmers would have to spend substantially greater resources on marketing to create and maintain brand recognition, ratings and advertising dollars.

Because the first objective for any programmer is to obtain distribution from MVPDs, most advertiser supported programmers employ an affiliate marketing group whose efforts are targeted at their distributors, i.e. cable operators, direct broadcast satellite (“DBS”) providers and other MVPDs. They also typically employ a limited number of trainers, whose

¹ There appears to be little doubt that movement of advertiser support programming services from broad service tiers to mini-tiers or a la carte carriage would result in reduced distribution and lower advertising revenues for those programmers. See, e.g., United States General Accounting Office, “Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry,” Report No. GAO-04-8 (rel. Oct. 24, 2003) (“GAO Report”) at 35 (because “advertisers will pay more to place an advertisement on a network that will be viewed, or have the potential to be viewed, by the greatest number of people...any movement of networks from the most widely distributed tiers to an a la carte format could result in a reduced amount that advertisers are willing to pay for advertising time because there would be a reduction in the number of viewers available to watch the networks.”).

function is to educate the customer service representatives (“CSRs”) at the cable system level or DBS call centers about the programming service, so that when questions concerning the service arise, the CSRs will be able to provide informed responses to consumers and effectively sell the programming service. When a programming service is launched on a basic or expanded basic tier, trainers often will work with the CSRs immediately before and coincident with the launch of the service. Because most carriage agreements are for multi-year terms, there often is little need for a programmer to devote substantial marketing or training resources to follow up with the cable system once its service is launched on a particular tier, unless the system is rebuilding or re-tiering or the affiliation agreement is coming up for renewal. Instead, as the programmer gains more distribution, it typically begins to focus more efforts on advertising sales.

Marketing an a la carte service is a vastly different and more expensive process. See, e.g., Raymond Lee Katz, et al., Bear Stearns, “A La Smart?” (March 29, 2004) (“Bear Stearns Report”) at 6 (“Currently much of the cable networks’ marketing efforts are directed at the cable operator...[but] in an a la carte world, marketing focus will need to change to the consumer...[which] changes the nature of networks’ marketing, with implications for organizations as well as P&Ls.”). In Starz Encore’s experience, the marketing work for a programmer is just beginning when it obtains a la carte carriage from an MVPD rather than a commitment to carry the service on a broad service tier. Rather than spreading the cost of adding a new service over the entire package to which the service would be added, the MVPD must be able to recoup the cost of adding an a la carte service from that service alone, or from the addition of new subscribers to the system attracted by the new service. Otherwise, there is no economic reason for the MVPD to add the service in the first place. An a la carte programmer must be able to demonstrate that it would be a separate profit center for the MVPD rather than “filling out” an existing service package. Consequently, an a la carte programmer must devote

enormous resources to marketing its service to distributors and to consumers in order to gain and maintain brand recognition and customer demand for the service and cannot rely on the popularity of other services in a tier to drive penetration.

Starz Encore devotes enormous effort and financial resources to marketing efforts designed to promote distribution and gain subscribership. During each quarter of the year, Starz Encore engages in a national marketing campaign tied to one or more of the movies being shown on its networks. Those campaigns include combinations of corporate marketing undertaken in conjunction with various distributors, cross-promotion on the distributor's other services, mass media advertising, direct mail, telemarketing, bill-stuffers, internet promotions, and incentive programs for the distributor's CSRs. Although the Starz Encore services are generally sold as premium services, advertiser supported programming services that are carried a la carte would have to engage in similar campaigns to maintain the distribution and ratings necessary to drive advertising sales.

An example of one of the Starz Encore national campaigns will demonstrate the effort that must be undertaken to promote an a la carte service. This summer, Starz Encore has been engaged in a national marketing campaign tied to its airing of the movie "Pirates of the Caribbean: The Curse of the Black Pearl." As part of that campaign, Starz Encore has sponsored a "Win One Million Dollars in Gold" promotion. Approximately 22 of Starz Encore's distribution affiliates are actively participating in this campaign. To date, well over 2 million direct mail pieces have been sent as part of the campaign, including over 1 million bill-stuffers, nearly a half million postcards and more than a half million letter packages. More than a dozen orders have been placed for print advertisements in various markets.

Starz Encore also is using mass media advertising and payment center promotions as part of the summer campaign. Starz Encore has placed numerous orders for cross-channel

spots with its distributors throughout the country to promote the Starz Encore services in general and the “Pirates” movie in particular. It also is running radio advertisements in some markets, using web advertising, and extensively placing in-theater ads. It has placed hundreds of posters and other promotional pieces in payment centers in multiple markets.

Finally, Starz Encore is using point of sale promotions involving more than 50,000 MVPD customer sales representatives. Unlike advertiser supported programmers carried on broad service tiers, Starz Encore may send its trainers into the same cable system or satellite provider’s customer call center on a weekly or monthly basis to ensure that consumers are receiving accurate information about the service and to provide the CSRs with new and different incentive packages to promote the service. As part of the summer campaign, our trainers have visited hundreds of MVPD call centers, trained thousands of CSRs, and distributed thousands of product knowledge flyers, posters, banners and other materials touting the Starz Encore service. Obviously, that level of ongoing marketing effort requires substantially more training and marketing personnel than required by tiered carriage, with concomitant increases in travel and entertainment expense budgets.

In addition to the Starz national campaign described above, Starz Encore partnered with multiple affiliates on affiliate-specific cooperative marketing campaigns. These campaigns included multiple tactics, like direct mail, telemarketing, CSR incentives and mass media. In total, the national and the affiliate specific campaigns placed Starz Encore marketing in front of 65 million cable and DBS subscribers during the second quarter of 2004.

The summer campaign and affiliate cooperative marketing program statistics provide an indication of the level of marketing effort that Starz Encore is required to undertake in the current marketplace, where very few services are marketed on an a la carte basis. In a world in which all cable programming services are offered a la carte, marketing of a particular service

would become even more difficult and expensive for the programmer. According to the Commission, there are 339 national, satellite-delivered, non-broadcast programming networks in operation today, another 84 regional programming networks, and more than 60 new services planned and in various stages of development. See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Tenth Annual Report), 19 FCC Rcd. 1606 (2004) (“Tenth Video Competition Report”) at ¶¶17, 142, 146. If each of these programmers is required to market its service on an a la carte basis, it would be extremely difficult for even established programmers (and virtually impossible for new programmers and niche programmers) to get the opportunity to educate the MVPDs’ CSRs about their respective programming services and to provide incentive and motivation for the CSRs to market the service.

In addition to increased marketing costs, programmers also would incur increased costs to monitor subscribership and churn in each system. To a large degree, programming services carried on the basic or expanded basic tier currently depend on cable operators to provide accurate subscribership information to support their license fee payments, with limited audit rights that may be available under their affiliation agreements. A la carte carriage, however, would require the programmer to monitor fluctuations in its subscriber base to ensure accurate payment of license fees by the cable operator. It would also require the programmer to devote additional resources to trying to win back subscribers who have decided to abandon the service.

C. A La Carte Carriage Will Add Costs for the Cable Operator

In addition to decreasing revenues and increasing costs for the programmer, government mandated a la carte carriage would increase costs for the cable operator. Among other things, the cable operator’s CSRs now would be responsible for taking orders to connect or

disconnect every channel individually (except for broadcast channels that presumably would continue to receive mandatory carriage), and the cable operator would have to track the churn separately for every channel offered on the system.² Most CSRs have a limited number of service options to describe to prospective customers under the current system of tiered carriage, but an a la carte regime would require seemingly endless descriptions of the available programming services. As a result, there would be far more calls made into the CSRs and each call is likely to take longer to process, requiring the cable operator to employ more CSRs to handle the same number of subscribers. Of course, as described above, innumerable additional programmers would be clamoring to get the opportunity to conduct training sessions with the CSRs in order to promote their services.

Cable operators also would have to obtain and deploy addressable converters for every television set connected to the cable system in order to implement a la carte carriage of channels now carried on basic or expanded basic tiers because “cable operators would need to scramble all of the networks they transmit to ensure that subscribers are unable to view networks they are not paying to receive.” GAO Report at 32. In addition, cable operators would face rising license fees from programmers attempting to recoup lost advertising revenues. The GAO Report stated that cable programmers indicated that a la carte carriage would require them to become more reliant on license fees than advertising revenues. One programmer told GAO that increases in license fees charged to the cable operator could range from \$0.25 per subscriber per month to “as much as a few dollars per subscriber per month.” GAO Report at 36. Given that most programmers would have existing program acquisition commitments and expenses, there is

² The Commission recently reported that “today...cable operators offer, on average, 70 analog video channels, 120 digital video channels, high-definition television programming, video-on-demand, and non-video services...” Tenth Video Competition Report at ¶18.

little doubt that license fees would have to increase to cover existing costs in the face of declining distribution and advertising revenues.

D. Tiering Decisions Should Be Left to the Marketplace

The Commission should not further interfere with marketplace decisions regarding tiered carriage of programming services. As the GAO reported, there are a variety of “technological, contractual and economic” factors that lead MVPDs to arrange programming networks in broad service tiers. GAO Report at 5. There are clear indications that programmers and distributors believe that tiered carriage is the most efficient means to provide programming services to consumers. According to the GAO, direct satellite service providers now account for 20 percent of all MVPD subscribers, and DIRECTV and EchoStar are among the five largest subscription video service providers. GAO Report at 9-10. Those distribution services, which had every incentive to try to distinguish themselves from cable and to respond to consumer interests, determined that broad service tiers akin to the cable model provided the optimal means to deliver video programming to consumers efficiently and economically.

With the exception of premium movie services like Starz Encore and others, nearly every other programming service that began as an a la carte service has moved to a tiered-carriage advertiser supported model. Bravo, the Golf Channel and Disney were launched initially as a la carte services, but later converted to tiered carriage to enhance distribution. Nearly every regional cable sports network that was launched as an a la carte service has followed that path as well. Thus, the current proposal to shift tiered programming networks to a la carte carriage runs directly contrary to the real world experience of the programmers who tried unsuccessfully to survive as a la carte service offerings.

Finally, if there is a real and unserved demand for stand-alone programming services, the Commission should leave it to the marketplace to respond to that demand. For

